

SERVED: May 21, 1999

NTSB Order No. EA-4767

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 18th day of May, 1999

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-15331
v.)	
)	
EVAN P. SINGER,)	
)	
Respondent.)	
_____)	

ORDER TO SHOW CAUSE

On September 28, 1998, counsel for respondent, Michael J. Pangia, filed with the Board and served on the Administrator a document styled "Respondent's Motion for Review by Members of the National Transportation Safety Board."¹ In NTSB Order EA-4723 (served November 13, 1998), the Board denied the motion, which, in effect, sought reconsideration of NTSB Order EA-4704 (served September 18, 1998), a decision sustaining the Administrator's emergency revocation of respondent's private pilot certificate for an alleged violation of section 61.37(a)(6) of the Federal Aviation Regulations (14 CFR Part 61). We deferred consideration of the Administrator's request that we determine, under Subpart J

¹The transmittal letter to the Board's General Counsel accompanying the motion stated simply: "Enclosed is Respondent's Motion for Review sua sponte."

of the Board's rules of practice, whether Mr. Pangia, with respect to other submissions concerning the motion sent to the Board, had violated a prohibition against ex parte communications. See NTSB Order EA-4723 at 2, n.5. We now take up that request.

Mr. Pangia did not just file the respondent's motion for review with the Board. He also sent a copy of the motion directly to each Board member, along with a two-page letter that, for various reasons, including some not pressed in the motion, urged the member to, on his own initiative,² reconsider the decision that his client had cheated on an FAA exam.³ The Administrator maintains that counsel for respondent violated the Board's prohibition against ex parte communications (see Section 821.60 et seq.) by failing to serve her with a copy of the letter sent to the Board members.⁴ We agree.⁵

²It is only in the two-page letter accompanying the motion that the issue of sua sponte review of the Board's decision is raised. The motion itself sought review primarily on the ground that the Board had erred by crediting testimony that the law judge had not. NTSB Order EA-4723 rejected that contention.

³In his letter, Mr. Pangia, in addition to providing his highly critical assessment of the quality and sufficiency of evidence adduced in support of the Administrator's case, essentially asserts that the Board's decision reflects that its members must have been too busy to read the briefs or record and that it could not have reached the decision it did without relying on faulty or biased recommendations. Mr. Pangia is, of course, entitled to hold a negative opinion of the Board, its staff, and its decisionmaking. At the same time, we think it inappropriate and indecorous for an attorney to impugn the diligence, competence, or integrity of the Board and its staff for no apparent reason other than his disagreement with the outcome of a case.

⁴Although Mr. Pangia, as noted, had sent the motion and the one-line transmittal letter to the Board's Office of General Counsel, where all documents related to a case on appeal before the Board must be filed, he did not send a copy of the two-page letter to the General Counsel's office. Since the request for sua sponte relief only appears in the two-page letter, which was not provided either to his adversary or the agency official charged with giving the Board members legal advice in enforcement cases, it is difficult to escape the conclusion that Mr. Pangia purposefully sought a private audience with the decisionmakers

Section 821.61(b)(1) states that "[n]o interested person outside the Board shall make or knowingly cause to be made to any Board employee an ex parte communication relevant to the merits of" a proceeding. Mr. Pangia's ex parte attack on the Board's decision clearly falls within this prohibition. We think this effort to influence our ruling on respondent's motion on the basis of extra-record argumentation raises a serious issue concerning Mr. Pangia's willingness or ability to comply with procedural rules designed to ensure fairness for all parties to a Board enforcement proceeding. It is therefore our tentative judgment that Mr. Pangia's privilege to practice before this agency should be suspended for six months and not reinstated thereafter unless or until such time as assurances are given that there will be no repetition of the conduct which is the subject of this order. Before issuing a final decision, however, we will give the parties an opportunity to comment on the matter.

(..continued)

themselves. In this regard we note, also, that none of the letters sent to the individual Board members reflected that copies were being furnished to the other Board members, the Administrator, or to anyone else. In other words, no individual Board member would have reason to believe that any other member's position on the motion had been affected by matters not addressed in the motion.

⁵After the Administrator, in her October 1, 1998 opposition to the motion for review, requested that the Board impose sanctions against the respondent and his counsel for the ex parte communications, Mr. Pangia, on October 6, furnished copies of the letters to the Administrator's counsel and to the Board's Office of General Counsel. A letter sent with the copies asserted that the failure to serve the Administrator was inadvertent. He did not explain why, if this were so, he had prepared two different transmittals for the respondent's motion, one version for the Administrator's counsel and for filing with the Board's General Counsel, and another version for each Board member. Moreover, we note, in connection with the representation that copies of the letters to the Board members were being forwarded to the Administrator's counsel on October 6, that the second page of the letter Mr. Pangia included as a copy of the letter sent to the Board Chairman is not the same as the original in that it only contains a signature line for Mr. Pangia. The original also had a signature line and address for a co-counsel named J.W. Luna, for whom Mr. Pangia had signed as well.

ACCORDINGLY, IT IS ORDERED THAT:

The parties are hereby given 30 days from the service date of this order to show cause why Mr. Pangia's privilege to represent parties in safety enforcement proceedings conducted by the Board should not be suspended on the terms, and for the reasons, discussed herein.

HALL, Chairman, FRANCIS, Vice Chairman, and BLACK, Member of the Board, concurred in the above order. HAMMERSCHMIDT and GOGLIA, Members, did not concur.